

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION**

IN RE

DIANA LEE ANDERSON

CASE NO. 16-70356

DEBTOR

ORDER

The Debtor filed a Motion for Sanctions for Violation of the Automatic Stay alleging that Southwest Stage Funding, dba Cascade Financial Services & Cascade Land Home Financing (“Cascade”) attempted to collect a debt in violation of the automatic stay. [ECF No. 34.] The parties briefed the issue [ECF Nos. 34-36, 54, 57] and an evidentiary hearing was set on September 17, 2019.

Prior to the hearing, the Debtor filed a Motion for Summary Judgment Related to Debtor’s Motion for Sanctions for Violation of Automatic Stay [ECF Nos. 62, 67], arguing Cascade did not present enough evidence to refute her statement of the facts. Cascade initially objected [ECF No. 66], but argued at the hearing that summary judgment was warranted in Cascade’s favor because the Debtor’s evidence was insufficient to show a violation of the automatic stay.

Summary judgment was not granted in favor of either party and the evidentiary hearing proceeded. The Debtor did not carry her burden of proof, so the Debtor’s motion for sanctions is denied.

I. FACTS.

Ditech Financial filed a proof of claim asserting a debt of \$32,917.65, secured by a lien on the Debtor’s mobile home. [Proof of Claim No. 10-1.] The parties agree that the installment

contract that created Ditech's lien on the mobile home does not give a right to inspect. [ECF No. 49 ("Stipulations") at 2.]

On March 6, 2019, Ditech's claim was transferred to Cascade. [ECF No. 32.] On or around March 18, 2019, an inspector came to the Debtor's property. [Stipulations at 1.] Cascade requested the inspection to verify the property was occupied. The inspector took photographs and filled out a report regarding the exterior condition of the home. [ECF No. 61-1.] The inspector's report does not discuss any problems with the inspection.

The Debtor testified that she confronted the inspector during this inspection. [ECF No. 51.] The Debtor said the inspector called her a racist and gave her a card with a phone number. [Id.] She called the number and discovered Cascade had sent the inspector. [Id.] The Debtor's attorney then sent a letter directly to Cascade asking that Cascade schedule any future inspections through his office. [ECF No. 60-1.] The Debtor's counsel did not send the letter to Cascade's counsel, who had made an appearance in the record two weeks earlier. [ECF No. 31.] Cascade's representative, Christina Luton, testified that Cascade has no record of receiving this letter. [ECF No. 55.]

The inspector returned on April 12, 2019. [Stipulations at 1.] The Debtor testified that the inspector tried to enter her home and she refused him access. [ECF No. 51.] The inspector took more photographs and filled out another report. [ECF No. 61-2.] This time, the report indicates the inspector clashed with the Debtor. [Id.]

Cascade declined an opportunity to cross-examine the Debtor's witnesses at the September 17 hearing. The Debtor cross-examined Luton. Luton confirmed Cascade hired Guardian Asset Management to inspect the mobile home for the sole purpose of confirming it was occupied. Guardian hired a third-party contractor to perform these inspections and the inspector worked for

the contractor. Luton said that Cascade does not require access to the home and could not locate the inspector to determine why he tried to come on the property or enter the Debtor's home.

II. ANALYSIS.

Jurisdiction is proper pursuant to 28 U.S.C. § 1334(b) and venue is proper pursuant to 28 U.S.C. § 1409(a). This is a core proceeding. *See* 28 U.S.C. § 157(b)(2)(G), (O); *see also In re Depew*, 51 B.R. 1010, 1013-14 (Bankr. E.D. Tenn. 1985) (relying on these provisions to find that a proceeding to determine if the stay was violated is a core proceeding). Entry of a final order is proper.

The Debtor argues that the inspector's actions constituted an "act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case" in violation of 11 U.S.C. § 362(a)(6). [ECF No. 34.] The Debtor was offended by the inspector's actions during the two inspections, including his language, entry on her property, and attempt to come into her home. The Debtor argues that these acts show a willful violation of the automatic stay, but she never connected the actions to an attempt to collect the underlying debt.

The Debtor must establish by a preponderance of the evidence that "(1) the actions taken were in violation of the automatic stay; (2) the violation was willful; and (3) the violation caused actual damages." *Clay v. Credit Acceptance Corp. (In re Clay)*, Case No. 10-53848, Adv. No. 11-5003, 2011 Bankr. LEXIS 1760, at *3 (Bankr. E.D. Ky. May 11, 2011). Violation of § 362(a)(6) requires a showing that the inspections "(1) could reasonably be expected to have a significant impact on the debtor's determination as to whether to repay, and (2) is contrary to what a reasonable person would consider to be fair under the circumstances." *Pertuso v. Ford Motor Credit Co.*, 233 F.3d 417, 423 (6th Cir. 2000) (quoting *In re Briggs*, 143 B.R. 438, 450-51 (Bankr. E.D. Mich. 1992)).

Cascade might have liability for the inspector's actions. *See Michaud v. Ablitt & Carulo, P.C. (In re Michaud)*, 2007 Bankr. LEXIS 202, at *8-9 (Bankr. D.N.H. Jan. 16, 2007) (if a creditor's agent violates the stay while acting under the creditor's control, then the creditor is liable). But Luton testified during cross-examination that Cascade only hired Guardian to perform a visual inspection of the outside of the property solely to determine if the property was occupied. Lenders routinely take steps to confirm occupancy because it minimizes the risk that damage to their collateral will go unremedied.

Luton testified that the inspector was given a prepared report with specific questions to address and did not need to enter the property or home. The questions answered by the inspector all appear directed to an exterior inspection that did not require access to the Debtor's property or home. [See ECF Nos. 61-1, 61-2 (inspector's reports).] Therefore, the inspection itself does not suggest an attempt to collect a debt without something more.

And nothing more was proven. The Debtor suggests the inspector went outside the scope of his authority and intentionally harassed her. She argues, therefore, that she was damaged because of the continuing fear and anguish caused by the inspector's actions. This might establish a cause of action for a tort,¹ but the Debtor has not shown the inspector's actions were an attempt by Cascade to collect the debt in violation of the automatic stay.

III. CONCLUSION.

The Debtor has presented no evidence that Cascade violated the automatic stay. Therefore, it is ORDERED that the Debtor's Motions [ECF Nos. 34, 62] are DENIED. It is also ORDERED that Cascade's Amended Motion to Strike and For Costs [ECF No. 66] is DENIED.

¹ This decision takes no position on the likelihood of success of such claim or any imputation of liability on any other party.

The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.



Signed By:
Gregory R. Schaaf
Bankruptcy Judge
Dated: Thursday, September 26, 2019
(grs)